

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN S. PENROD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 07-cv-02-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner John S. Penrod's ("Penrod") motion for leave to appeal *in forma pauperis* (Doc. 26). Penrod appeals the Court's denial of his motion to vacate his sentence pursuant to 28 U.S.C. § 2255. A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The Court is satisfied from Penrod's affidavit that he is indigent. Furthermore, the Court does not believe that this appeal is in bad faith. Therefore, the Court **GRANTS** the motion to proceed on appeal *in forma pauperis* without prepayment of fees and costs (Doc. 26).

IT IS SO ORDERED.

DATED: February 6, 2008

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE